Reply Brief
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Dated: June 24, 2010
Electronic Signature for Charles A. Bieneman: / Charles A. Bieneman /

Docket No.: 03-8012
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
James H. Drew et al.

Application No.: 10/699,141 Confirmation No.: 3441

Filed: October 31, 2003 Art Unit: 3623

For: PERSONNEL PRODUCTIVITY INDICES Examiner: J. G. Sterrett

REPLY BRIEF

MS Appeal Brief - Patents
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This Reply Brief is filed in response to the Examiner's Answer dated May 6, 2010 ("Examiner's Answer" or "Answer"), pursuant to 37 C.F.R. § 41.41 and in furtherance of the Notice of Appeal filed on August 28, 2009, and the Appeal Brief filed October 28, 2009. This application was filed on October 31, 2003.

Any fees associated with this Reply Brief are identified in an accompanying transmittal paper.

ARGUMENT

I. Ground of Rejection No. 1: Claims 1, 3, and 5-28 Are Directed to Statutory Subject Matter Under Section 101.

As argued in the Appeal Brief (pages 20-21), claims 1, 3, and 5-28 recite statutory subject matter under the "machine or transformation" test of *In re Bilski*, 545 F.3d. 943 (Fed. Cir. 2008). Specifically, independent claims 1 and 22 are each directed to a "computer implemented method," and each further recites "storing employee task data in a database of a computing system." Claim 1 further recites "analyzing said productivity scores . . . utilizing said computing system." Claim 22 further recites "applying linear regression techniques to said productivity scores utilizing the computing system."

The Examiner's Answer (page 28) states that a recitation of a machine "in the preamble fails to positively recite a tie to a particular apparatus," as does "the recitation that the analysis is performed 'utilizing said computing system.'" However, if, as the Examiner has alleged (e.g., Answer, page 7), the standard for patentability under Section 101 is whether a claim "may be performed within the human mind," then independent claims 1 and 22 are each patentable. That is, the requirement of a "computer implemented method," limits the claims from being "performed within the human mind." For least this reason, the Section 101 rejection of claims 1 and 22, and any claims depending therefrom, must be reversed.

Further, the Examiner's argument concerning the word "utilizing" is specious. Even though claims 1 and 22 positively recite "utilizing said computing system," the Examiner contended that the computing system could be used by any person, which would allegedly render claims 1 and 22 unpatentable. (Answer, page 28.) The Examiner's contention is irrelevant, inasmuch as the claims pass the threshold of Section 101 by being affirmatively tied to a particular machine, to wit, "said computing system." Moreover, the fact that the claims are tied to a particular machine is even more clear when the recitation of "utilizing said computing system" is considered in the context of the claims. For example, in claim 1, the recitation appears with respect to "analyzing said productivity scores comprises applying linear regression techniques to said productivity scores utilizing said computing system." In other words, the computing system is used to apply linear regression techniques to the productivity scores. This

is a step that is limited from being performed in the human mind or without a particular machine, i.e., a "said computing system." For these further reasons, the Section 101 rejection of claims 1 and 22, and any claims depending therefrom, must be reversed.

II. Grounds of Rejection Nos. 2 and 3.

A. The Examiner's Official Notice is Improper.

Having made no effort to support Official Notice taken as required by law and as timely requested by Appellants, the Examiner has based his continued reliance on Official Notice on the allegation that Appellants have failed to meet a purported burden to explain why Official Notice cannot be supported. (Answer, pages 29-33.) As noted in the Appeal Brief (page 21), under the Examiner's interpretation of Official Notice, the Examiner could simply take Official Notice that the entire claim is "old and well known," and require Appellants to prove otherwise. This interpretation cannot be correct. Instead, in concert with the well-established legal principle that the Examiner has a burden of stating a *prima facie* claim rejection, 37 CFR § 1.104(d)(2) clearly states that "[w]hen a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee." Nothing in the Examiner's Answer, or any prior paper, provides data in support of the Official Notice that is "as specific as possible," nor was any of the Official Notice supported "when called for by the applicant."

Because all of the claim rejections based on alleged prior art included reliance on Official Notice, all such rejections must be reversed.

Further, as also argued in the Appeal Brief (pages 22-23), the Examiner's improper attempt to expand the Official Notice taken also warrants reversal of the present claim rejections. In the Examiner's Answer (page 33), the Examiner contended that he was not limited to the Official Notice explicitly taken because he "never stated that the examples given of the official notice were the only two given." By this reasoning, any time an applicant pointed out that a reference failed to teach or suggest a claim recitation, the Examiner could simply say that Official Notice had been taken of the claim recitation. Clearly, as the above quotation of 37 CFR

§ 1.104(d)(2) demonstrates, the Examiner has the burden of specifically identifying instances of Official Notice taken. Having stated that Official Notice was limited to:

> (1) "that it is old and well known to remove outliers from a probabilistic distribution," and
>
> (2) "that it is old and well known in an organization for individuals to perform different tasks,"

the Examiner cannot now rely on any other alleged fact as Officially Noticed. Because the Examiner is now doing so, there is further reason why the rejections of Appellants' claims must be reversed.

Further, as noted in the Appeal Brief (page 23), the Official Notice taken is overbroad as to be inapplicable to Appellants' specific claim recitations, providing yet further reason why the rejections of Appellants' claims must be reversed.

B. Independent Claim 1 Is Patentable Over The Cited References.

In the Final Office Action, claim 1 was rejected under Section 103(a) as being unpatentable over the Examiner's Official Notice in view of Roth, Edwards, and further in view of Trocine. As discussed above and in the Appeal Brief, the Examiner's Official Notice is improper. As discussed below and in the Appeal Brief, Roth clearly fails to teach or suggest numerous recitations found in Appellants' claims. Further, none of the other cited references compensate for the acknowledged deficiencies of Roth. In addition, there is certainly no rationale to support combining the references.

1. ***"storing employee task data in a database of a computing system, wherein said employee task data includes a number of tasks completed and an amount of time spent on at least one completed task"***

None of the cited references, including Roth, teach or suggest the identified recitation. For this reason alone, claim 1 is patentable over the cited references. The Examiner alleged that Roth teaches the identified recitation. However, the Examiner dismissed the identified recitation by taking Official Notice for part of the recitation and by then simply alleging that the remainder of the recitation is irrelevant as "nonfunctional." The Examiner has admitted that the cited references do not teach or suggest the foregoing recitation of claim 1. (Answer, page 35.)

Further, the Examiner improperly stated "that the mere storing of data in a database makes the type of data irrelevant, since the storing of data is functionally and structurally the same, regardless of the data type." (Answer, page 35.) As argued in the Appeal Brief, to which arguments in the Examiner did not respond, all claim recitations must be considered in view of the cited references.

Moreover, even if the Examiner had properly taken Official Notice, the Examiner's taking of Official Notice that "storing data in a database, while not explicitly taught by the references, is old and well known" (Final Office Action, page 3), is insufficient to sustain the Examiner's rejection of claim 1. Clearly claim 1 recites more than simply "storing data in a database," and thus the Examiner's Official Notice, is not only improper but also fails to compensate for the acknowledged deficiencies of the cited references.

For at least the foregoing reasons, the rejection of claim 1, and all claims depending therefrom, must be reversed.

2. *"generating sets of task scores based on a selected model design of task assignments utilizing said employee task data"*

In the Final Office Action, the Examiner alleged that Roth teaches the identified recitation in a section entitled "The Need for Multi-Attribute Utility" on page 343. (Final Office Action, page 3.) Further, the Examiner alleged that "Roth teaches generating task scores (eg. Interview and cognitive test) as part of multiattribute analysis (MAU)." (Final Office Action, page 8.) As argued in the Appeal Brief (pages 24-25), Roth says nothing about "employee task data," let alone "generating sets of task scores based on a selected model design of task assignments utilizing said employee task data," as recited in claim 1.

Further, regarding the Examiner's new argument (Answer, page 36) that paragraph 5 of Appellants' specification "points to two prior art references that teach 'generating sets of task scores based on a selected model design of task assignments,'" Appellants' Specification in fact mentions nothing more than "basic approaches used in combining, or weighting the components of a job task to arrive at a single performance measure, including rational, equal and statistical weighting." Paragraph 5 of Appellants' Specification does not describe these references, or any

others, as teaching or suggesting "generating sets of task scores," much less doing so "based on a selected model design of task assignments utilizing said employee task data."

For at least the foregoing further reasons, the rejection of claim 1, and all claims depending therefrom, must be reversed.

3. *"selecting a centralized composite design as said model design"*

The Examiner acknowledged that Roth fails to teach or suggest the foregoing recitation of claim 1, and cited Trocine for the deficiencies of Roth. (Final Office Action, page 8.) First, the Examiner quoted the following passage of Roth:

> MAU also increases the participation of decision makers in the utility analysis process by asking them what factors to consider, how to measure the factors, and what functions should be used to combine them.

(Roth at 341.) The Examiner then alleged that "[f]rom this passage ***it is implied*** that an issue in constructing an MAU is identifying 'what factors to consider.'" (Final Office Action, page 5, emphasis added.) Next, the Examiner stated that "[p]art of the answer in identifying what factors to consider is provided by Trocine." (Id.)

As argued in the Appeal Brief (pages 27-28), Roth's disclosure of seeking input from decision makers as to "what factors to consider, how to measure the factors, and what functions should be used to combine them" is clearly distinguishable from "selecting a centralized composite design as said model design," as recited in claim 1. Further, Trocine discloses that certain "important variables can later be used to optimize the [simulation] model," and that "[s]imulation models typically represent complex and stochastic systems. Experimentation on these systems is assumed to be time consuming and can be expensive in terms of computation. Minimizing the number of experiments while maximizing information is the ultimate goal." (Trocine at 749.) Thus, as explained in the Appeal Brief, Trocine is applicable neither to Roth nor Appellants' claims.

The Examiner responded to Appellants' arguments simply by stating that Roth teaches "that combining inputs clinically" is less reliable than using statistical/mathematical strategies to combine inputs, whereas, according to the Examiner, Trocine discloses a "mathematical/statistical way to identify salient variables." (Answer, page 38.) Even if the

Examiner has correctly characterized the references, which Appellants do not concede, the Examiner has not explained how Roth's disclosure of seeking input from decision makers as to factors to consider could have been combined with Trocine's disclosure of using simulation models to represent complex and stochastic systems. For least this further reason, the rejection of claim 1 must be reversed.

Further, the Examiner has not shown that there would have been any reason to have combined Roth and Trocine. The Examiner's argument boils down to the statement that "the fact that Roth teaches decision-makers participating in MAU as far as selecting variables to measure and how to combine them does not rule out using other techniques to identify what those variables are." (Answer, pages 37-38.) In other words, the Examiner is arguing that the references would have been combined because they could have been combined. Even under *KSR*, the Examiner must provide some affirmative reason to have combined the references. Moreover, because, as discussed above and in the Appeal Brief, Roth and Trocine actually use incompatible methods of analysis, it could not have been obvious to combine them, e.g., Trocine could not have provided "insight into what variables would have an impact on employee performance" as measured by Roth, as alleged by the Examiner. (Answer, page 37.) For least these further reasons, the rejection of claim 1, and all claims depending therefrom, must be reversed

4. *"performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores"*

Appellants previously argued that Roth fails to teach the above claim recitation. The Examiner disagreed and stated that "MAU as taught by Roth evaluates individual performance (e.g. the cognitive test and interview per above) to determine what the scores are for that performance (i.e. assigning productivity scores to the task scores." (Final Office Action, page 6.) As argued in the Appeal Brief (pages 28-29), Roth in fact says nothing about scoring how an employee performed during an interview, let alone "performing a plurality of evaluations of said sets of task scores, said evaluations assigning productivity scores to said sets of task scores," as recited in claim 1. The Examiner responded to this argument by simply repeating that Roth teaches "a plurality of evaluations" by disclosing "an interview and cognitive test," and that Roth teaches "assigning productivity scores to said sets of task scores" by assigning points to the

interview and cognitive test. (Answer, page 39.) However, interviews and cognitive tests are not "evaluations of said sets of task scores." Further, scores of interviews and cognitive tests are not "productivity scores." For least these further reasons, the rejection of claim 1, and all claims depending therefrom, must be reversed.

5. ***"analyzing said productivity scores to determine productivity parameters, wherein analyzing said productivity scores comprises applying linear regression techniques to said productivity scores utilizing said computing system"***

The Examiner has most recently relied on a combination of Roth, Edwards, and Trocine to reject the above recitation of claim 1. However, as argued in the Appeal Brief (pages 29-30), the combination of Roth, Edwards, and Trocine fails to teach or suggest the identified recitation of claim 1.

In the Appeal Brief (pages 29-30), Appellants traversed the Examiner's assertion that "Roth teaches that an individual's performance can be measured by a weighted combination of scores for tasks that they perform." (Final Office Action, page 6.) In the Answer (page 40), the Examiner focused on the fact that Roth discusses waiting attributes, and ignored Appellants' argument that Roth says nothing at all about "productivity scores," "productivity parameters," or "applying linear regression techniques to said productivity scores," as recited in claim 1. For least this reason, the rejection of claim 1 must be reversed.

Further, Appellants argued (Appeal Brief, page 30) that Roth and Edwards are not combinable because Roth teaches that the "use of a MAU approach requires combining the various attributes . . . [by] developing a set of functions that weight each attribute and combin[e] the attributes ***into a single metric***." (Roth at 343, emphasis added.) The Examiner responded to this argument merely by alleging that linear regression taught by Edwards would have provided "what those weights should be (i.e. regression is known to provide the weights or coefficients for variables or functions in the regression equation)." (Answer, page 40.) However, merely because linear regression is known to have certain benefits does not mean that one of ordinary skill would have thought such benefits existed in the context of Roth, or that one of ordinary skill would have thought it possible to have used linear regression in the context of Roth. As demonstrated in the Appeal Brief (page 30), one of ordinary skill could not and would not have

combined Roth and Edwards. For at least these further reasons, the rejection of claim 1, and all claims depending therefrom, must be reversed.

6. *"applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees"*

The Examiner has relied on a combination of Roth, Edwards, and Trocine to reject the above recitation of claim 1. However, as argued in the Appeal Brief (pages 30-32), the combination of Roth, Edwards, and Trocine fails to teach or suggest the identified recitation of claim 1.

The Examiner failed to respond to the arguments in the Appeal Brief (pages 30-31) that the cited references fail to even mention "productivity parameters" or "employee task scores," let alone teach or suggest "applying said productivity parameters to employee task scores for said employees to obtain said performance measures for said employees," as recited in claim 1. (*See* Answer, page 41.) For least this reason, the rejection of claim 1 must be reversed.

Further, the Examiner did not respond to Appellants' arguments that Official Notice taken was both improper and so broad as to be inapplicable to the above recitation of claim 1. (*See* Answer, page 41.) For at least either of these further two reasons, the rejection of claim 1 must be reversed.

Moreover, the Examiner responded to Appellants' argument that the Examiner had done nothing more than use their claims as a road map to form the obviousness rejection by simply providing a boilerplate discussion of hindsight reasoning. (Answer, page 41.) This boilerplate does not address the specific explanation in the Appeal Brief (page 32) concerning the improper hindsight and circularity of the Examiner's rejection. Therefore, at least for these further reasons set forth in the Appeal Brief, the rejection of claim 1 must be reversed.

For at least any of the foregoing independent reasons, independent claim 1 is patentable over the Examiner's Official Notice and the cited references. Accordingly, Appellants respectfully request reversal of the Section 103 rejection of claim 1, as well as of claims 3 and 5-21 depending therefrom.

C. Independent Claim 22 Is Patentable Over the Cited References

Concerning independent claim 22, the Examiner's Answer (page 41) stated simply that "Applicant's arguments fail to comply with 37 CFR 1.111 (b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentable he distinguishes them from the references." In fact, the Appeal Brief (page 33) noted that the Examiner had relied on the rejections of claims 2 and 32 in rejecting claim 22, even though claim 22 is not identical to claims 2 and 3. Further, the Appeal Brief (page 33) gave specific examples of language from claim 22 that the Examiner had not met his burden of addressing. Therefore, the Examiner failed to state a *prima facie* rejection with respect to claim 22, and Appellants more than adequately traversed the rejection. The rejection of claim 22 must be reversed for at least this reason. As also discussed in the Appeal Brief (page 33), the Examiner improperly took Official Notice with respect to claim 22. For at least these reasons, the Section 103 rejection of claim 22, as well as of claims 23-28 depending therefrom, must be reversed.

D. Independent Claim 29 Is Patentable Over the Cited References

As noted in the Appeal Brief (page 34), claim 29 is not identical to claim 22, and therefore the Examiner improperly failed to state a *prima facie* rejection with respect to claim 29 in lumping it in with claim 22. Furthermore, as discussed in detail above and in the Appeal Brief, the Examiner's reliance on Official Notice is improper, and the Section 103 rejection should be reversed for this reason alone. For at least these reasons, and for reasons set forth in the Appeal Brief, the rejection of claim 29 must be reversed.

E. Independent Claim 33 Is Patentable Over the Cited References

As noted in the Appeal Brief (page 34), claim 33 is not identical to claim 6, and therefore the Examiner improperly failed to state a *prima facie* rejection with respect to claim 34 in lumping it in with claim 6. Furthermore, as discussed in detail above and in the Appeal Brief, the Examiner's reliance on Official Notice is improper, and the Section 103 rejection should be reversed for this reason alone. For at least these reasons, and for reasons set forth in the Appeal Brief, the rejection of claim 29 must be reversed.

F. The Dependent Claims Are Patentable Over the Cited References

Appellants note that all dependent claims are allowable, at least for reasons based on their dependencies from an allowable independent claim. However, as discussed below and in the Appeal Brief by way of example with respect to dependent claims 3, 5, 8-10, 12, 14, 16-17, 23-26, 30, and 34, the dependent claims are also independently patentable over the cited references.

1. Dependent Claim 3

Claim 3 depends from claim 1. In the Answer (page 42), the Examiner made clear that the rejection of claim 3 depends on the assertion that the equation recited in claim 3 includes a second order polynomial, i.e., a square. However, the expression to which the Examiner pointed ($F_{tk}F_{tk'}$) is plainly not a square. That is, as the summations at the end of the equation are performed, F_{tk} and $F_{tk'}$ will be different values in almost all instances, *i.e.,* when k and k' are different. Therefore, under the Examiner's own reasoning, neither Roth nor Edwards can teach or suggest the equation recited in claim 3, and the rejection of claim 3 must be reversed for at least this reason.

The rejection of claim 3 must also be reversed because, as argued in the Appeal Brief (pages 35-36) the cited references do not teach or suggest that "said linear regression is applied to an expression for said productivity scores." Further, the cited references fail to teach or suggest using the equation recited in claim 3.

2. Dependent Claims 16 and 34

As stated in the Appeal Brief (page 36), although the claims differ in scope, claim 16 and 34 are separately patentable, and the rejections of those claims must be reversed, at least for the reasons set forth herein and in the Appeal Brief concerning claim 3.

3. Dependent Claim 5

Claim 5 depends from claim 1 and recites the following:

> The method of claim 1, wherein generating said sets of task scores comprises:
>
> determining whether said sets of task scores exceed a predetermined number; and
>
> modifying said centralized composite design by a fractional factorial when said sets of task scores exceed said predetermined number.

In the Final Office Action (page 17), the Examiner admitted that Roth does not teach any of the recitations of claim 5. Nonetheless, the Examiner's Answer (page 43) stated that "Roth was relied upon for generating sets of task scores," and "Trocine was relied upon for the teaching related to the use of fractional factorials to limit the number of variables." However, if Trocine was relied upon solely for teaching fractional factorials, then the Examiner has admitted that no reference teaches or suggests "determining whether said sets of task scores exceed a predetermined number." For least this reason, the rejection of claim 5 must be reversed.

Further, even if these alleged teachings of Trocine were accepted as true, Trocine still fails to teach or suggest "modifying said centralized composite design by a fractional factorial when said sets of task scores exceed said predetermined number," as recited in claim 5. Roth cannot compensate for the deficiencies of Trocine because, as the Examiner has admitted, Roth does not include any teaching or suggestion related to fractional factorials or "when said sets of task scores exceed said predetermined number."

For at least these reasons, dependent claim 5 is patentable over the cited references.

4. Dependent Claims 14 and 23

Although the claims differ in scope, as argued in the Appeal Brief (page 38), claims 14 and 23 are patentable over the cited references, and the rejections of those claims must be reversed, at least for reasons set forth concerning claim 5.

5. Dependent Claim 8

Claim 8 depends from claim 1 and recites in part "wherein generating sets of task scores comprises adding a number of recorded task scores to said sets of task scores." In the Answer (page 44), the Examiner once again relied on Roth's teaching of evaluating interviews and cognitive tests as allegedly disclosing "task scores." In fact, as argued in the Appeal Brief (pages 38-39), Roth says nothing at all about "generating sets of task scores," and clearly fails to teach or suggest "adding a number of recorded task scores to said sets of task scores," as recited in claim 8. Thus, for at least these reasons, dependent claim 8 is patentable over the cited references.

6. Dependent Claim 24

Claim 24 depends from independent claim 22 and recites in part "wherein generating said sets of task scores comprises adding a number of recorded task scores to said sets of task scores." The Examiner rejected claim 24 using the same rationale as applied to claim 8. (Final Office Action, page 22.) Although differing in scope, claim 24 is patentable over the cited references for at least the reasons discussed above and in the Appeal Brief with respect to claim 8. Thus, for at least these reasons, dependent claim 24 is patentable over the cited references.

7. Dependent Claim 9

Claim 9 depends from claim 8, which depends from claim 1. Claim 9 recites in part "wherein said sets of task scores are scaled to represent performance by employees over a common work period, with a fixed number of hours worked." The Examiner alleged that Roth teaches the identified recitations on page 343, paragraphs 3 and 4 with a discussion of how "the MAU approach includes combining attributes based on factors (i.e. they are scaled)," and "since the particular tasks are an interview and a test, this ***suggests*** work performed over a common period." (Final Office Action, page 19, emphasis added.) Further, in the Answer (page 45), the Examiner argued "that the activities [allegedly disclosed by Roth], i.e. an interview and a test, suggest that the activities of the employees occur over a common work period." However, Roth says nothing at all about conducting interviews "over a common work period." Furthermore, Roth says nothing at all about the "sets of task scores [being] scaled to represent performance by employees over a common work period," as recited in claim 9.

The Examiner admitted that Roth fails to teach "with a fixed number of hours worked," but took Official Notice that "that using such a measure is known in the art to provide normalization, i.e. a standardization of what time workers work such that a comparison can be made between the amount of work achieved." (Final Office Action, page 19.) However, as previously discussed, the Examiner's Official Notice is improper and cannot stand. Further, even if the Examiner's Official Notice were accepted, Roth has nothing to do with evaluating employee performance, and clearly fails to teach or suggest that "sets of task scores are scaled to represent performance by employees over a common work period," as recited in claim 9.

In the portion cited by the Examiner, Roth analyzes a hypothetical potential human resource decision involving hiring new sales managers. Roth states that "an HRM [human resource management] department may be interested in hiring 25 district sales managers," for example, by "using either a cognitive ability test or a structured behavioral interview." (Roth at 343.) Clearly the cited portion says nothing at all about "sets of task scores [being] scaled to represent performance by employees over a common work period," as recited in claim 9. Thus, for at least these reasons, dependent claim 9 is patentable over the cited references.

8. Dependent Claims 12 and 25

Claim 12 depends from claim 11, which depends from claim 10, which depends from claim 1. Claim 25 depends from claim 24, which depends from independent claim 22. Although differing in scope, the Examiner rejected claims 12 and 25 using the same rationale as applied to dependent claim 9. (Final Office Action, pages 21, 22.) Claims 12 and 25 each recites in part that the "sets of task scores are scaled to represent performance by employees over a common work period, with a fixed number of hours worked."

As discussed above with respect to claim 9, the Examiner's Official Notice is improper and cannot support the Section 103 rejections. Further, even if the Examiner's Official Notice were accepted, Roth has nothing to do with evaluating employee performance, and clearly fails to teach or suggest that "sets of task scores are scaled to represent performance by employees over a common work period," as recited in claims 12 and 25. Further, Roth clearly fails to teach or suggest scaling anything, let alone that "sets of task scores are scaled." Thus, for at least these additional reasons, dependent claims 12 and 25 are patentable over the cited references.

9. Dependent Claim 10

Claim 10 depends from claim 1 and recites in part "wherein said plurality of evaluations are performed by a plurality of evaluators, said evaluators being familiar with said task assignments and with assigning productivity scores." The Examiner alleged that "Roth teaches various techniques for assigning scores where the assigners are familiar with what is being rated and in assigning scores," and cited page 350, paragraph 2. (Final Office Action, page 20.) However, as previously discussed, Roth says nothing at all about "assigning scores." Further, the cited portion merely discusses the findings of group researchers and discusses how "[g]roup

researchers have tested the effects of staticized, Delphi, Consensus, and nominal groups," and then discusses a few details of each type of group. For example, Roth states that "[s]taticized groups are essentially collections of individuals who never meet and make suggestions or estimate quantities," and "[d]elphi groups are similar since they never meet as a group to offer suggestions or make estimates." (Roth at 350, ¶ 2.)

Clearly Roth says nothing at all about "said plurality of evaluations [being] performed by a plurality of evaluators," where the "evaluators [are] familiar with said task assignments and with assigning productivity scores," as recited in claim 10. Thus, for at least these additional reasons, dependent claim 10 is patentable over the cited references.

10. Dependent Claims 17, 26, and 30

Claim 17 depends from claim 16, which depends from claim 15, which depends from claim 14, which depends from claim 1. Claim 26 depends from independent claim 22, and claim 30 depends from independent claim 29. Although differing in scope, the Examiner rejected claims 17, 26, and 30 using the same rationale as applied to dependent claim 10. (Final Office Action, pages 22, 23.) Claims 17, 26, and 30 each recites in part that "said plurality of evaluations are performed by a plurality of evaluators," where "said evaluators [are] familiar with said task assignments and with assigning productivity scores."

For at least the reasons discussed above with respect to claim 10, dependent claims 17, 26, and 30 are patentable over the cited references.

CONCLUSION

In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65632-0559, from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Dated: June 24, 2010

Respectfully submitted,

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